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Message Text

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PAGE 01 BUENOS 01857 181323Z

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ACTION L-02

INFO OCT-01 ARA-10 ISO-00 EB-07 COME-00 CIAE-00 INR-07

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R 181220Z MAR 75
FM AMEMBASSY BUENOS AIRES
TO SECSTATE WASHDC 0360

UNCLAS BUENOS AIRES 1857

E.O. 11652: N/A
TAGS: EINV, AR
SUBJECT: CALVO CLAUSE AND RELATED PROVISIONS

REF: STATE 024007 (2/22/75)

1. LAW 20557 ON FOREIGN INVESTMENT PASSED BY CONGRESS ON NOV.7, 1973, ESTABLISHES, IN ARTICLE 6, CLAUSE B), THAT NO AUTHORIZATION SHALL BE GRANTED FOR NEW INVESTMENTS IF THE CONTRACT CONTAINS A CLAUSE THAT "REMOVES EVENTUAL CONFLICTS OR CONTROVERSIES FROM THE JURISDICTION AND COMPETENCE OF ARGENTINE COURTS OR ALLOWS THE SUB-REGATION BY FOREIGN STATES OR INTERNATIONAL LEGAL PERSONS OF THE ACTIONS AND RIGHTS OF FOREIGN INVESTORS". THIS IS FIRST TIME THIS TYPE OF RESTRICTIVE CLAUSE HAS APPEARED IN ARGENTINE LEGISLATION. HOWEVER, ARGENTINE POLICY IN PAST HAS BEEN TO RESTRICT JURISDIC-TION TO ARGENTINE COURTS IN CASE OF FOREIGN INVESTMENT DISPUTES.

2. UNDER PREVIOUS FOREIGN INVESTMENT LAWS, MORE GENERAL PROVISIONS WERE FOUND LIMITING TREATMENT OF FOREIGN CAPITAL INVESTMENT TO THAT PROVIDED TO NATIONAL CAPITAL (SEE ARTICLE 4 OF LAW 14222 PASSED BY CONGRESS IN AUGUST, 1953; ARTICLE 1 OF LAW 14780, PASSED DEC., 1958; AND ARTICLE 1, OF LAW 19151, PASSED JULY 1971).

3. ARGENTINE CONSTITUTION - IN ARTICLE 20 - GUARANTEES TO FOREIGNERS SAME TREATMENT AS THAT PROVIDED TO NATIONAL CITIZENS. ARTICLE 67, CLAUSE 16 ESTABLISHES THAT CONGRESS HAS AUTHORITY OVER IMPORT OF FOREIGN CAPITAL.

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PAGE 02 BUENOS 01857 181323Z

4. IN CASE OF PRIVATE INVESTMENT DISPUTES, THIRD PARTY ARBITRA-

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006

TION GENERALLY HAS BEEN EXCLUDED BY POLICY IN PAST AND NOW EXPLI-
CITLY UNDER PROVISION NEW FOREIGN INVESTMENT LAW.
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